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Attorneys for Plaintiffs, TOMAS BARRERA, SR., individually and as a Personal Representative of THE ESTATE OF TOMAS BARRERA, JR.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARIA LAZOS, et al,
Plaintiff,
vs.
CITY OF OXNARD, et al,
Defendants.
TOMAS BARRERA, SR.
Plaintiff,
vs.
CITY OF OXNARD, et al,
Defendants.

Case No. CV 08-02987 RGK (SHx)

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
NO. 13 TO PROHIBIT PLAINTIFF
FROM OFFERING HEARSAY
STATEMENTS RE OPINIONS AS TO
ULTIMATE ISSUES**

Date: August 11, 2009
Time: 9:00 a.m.
Courtroom: 850

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs, MARIA LAZOS and TOMAS BARRERA, SR., individually and as representatives of the ESTATE OF TOMAS BARRERA, hereby file their Opposition to Defendants' Motion in Limine No. 13, to Prohibit Plaintiff from Offering Hearsay Statements re Opinions as to Ultimate Issues.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **ANY OBJECTION TO MS. ESTRADA'S TESTIMONY IS WAIVED AS IT**
4 **WAS NOT TIMELY MADE DURING HER DEPOSITION**

5 Fed. R. of Ev. Rule 32(d)(3)(B) provides that,

6 "An objection to an error or irregularity at an oral examination is waived if:

7 (i) it relates to the manner of taking the deposition, the form of a question or
8 answer, the oath or affirmation, a party's conduct, or other matters that might
9 have been corrected at that time; and

10 (ii) it is not timely made during the deposition."

11
12 In this case, Ms. DeGenna, who represented Defendants at the time the
13 deposition of Mr. Barrera was taken, did not object to his testimony. Therefore,
14 pursuant to Fed. R. of Ev. Rule 32(d)(3)(B), any objected to said testimony has been
15 waived.

16 **II.**

17 **MR. BARRERA'S TESTIMONY IS ADMISSIBLE**

18 Fed. R. of Ev. Rule 701 provides that a witness' testimony in the form of
19 opinions or inferences is appropriate provided it is limited to those opinions or
20 inferences which are rationally based on the perception of the witness. The rule
21 prohibiting testimony concerning ultimate issues has been abolished, and Fed. R. of
22 Ev. Rule 704(a) provides that "testimony in the form of an opinion or inference
23 otherwise admissible is not objectionable because it embraces an ultimate issue to be
24 decided by the trier of fact." Under the Federal Rules of Evidence, opinion testimony
25 is admissible as long as the witness is competent to testify, that is, as long as the
26 witness has perceived the events upon which his opinion is based. The opinion may
27 embrace the ultimate issue to be decided by the trier of fact. See U.S. v. Crawford,
28

1 239 F.3d 1086, 1090 (9th Cir.,2001) (lay witness may testify as to an ultimate issue
 2 of fact, so long as the testimony is otherwise admissible); U.S. v. Allen, 10 F.3d 405,
 3 414 (7th Cir., 1993) (it is no longer a valid objection that witness is offering an
 4 opinion on an "ultimate issue"); Wade v. Haynes, 663 F.2d 778, 783 (C.A.Mo., 1981)
 5 (it is settled that testimony otherwise admissible is not inadmissible because it
 6 embraces an ultimate issue to be decided by the trier of fact); U.S. v. Miller, 600 F.2d
 7 498, 500 (C.A.Miss., 1979) (Rule 704 of the Federal Rules of Evidence clearly
 8 permits a witness to express an opinion on an ultimate issue to be decided by the
 9 jury.)

10 It is proper for a lay witness, in relating his observations, to testify in terms
 11 which include inferences and to state all relevant inferences, whether or not they
 12 embrace ultimate issues to be decided by the trier of fact, unless the trial judge,
 13 exercising judicial discretion, determines that drawing such inferences require special
 14 skill or knowledge or would tend to mislead the jury. State v. Wigley 5 Wash.App.
 15 465, 468 (Wash.App. 1971).

16 Furthermore, statements from Chief Crombach and from OPD officers are
 17 considered admissions by party-opponent and are not hearsay. F.R.E. Rule 801(d)(2).


18 III.

19 CONCLUSION

20 Based on the foregoing, it is respectfully requested that the motion be denied.


21 Dated: July 16, 2009

LAW OFFICES OF GREGORY A. YATES, P.C.

22 
 23 GREGORY A. YATES
 24 Co-Counsel for Plaintiffs,
 25 TOMAS BARRERA, SR.

26 Dated: July ____, 2009

LAW OFFICES OF KIM D. SCOVIS

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 27 KIM D. SCOVIS
 28 JENNY SCOVIS
 Counsel for Plaintiff,
 MARIA LAZOS